12/14/00
No. 10

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.

Paper

GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Network Engines, Inc.

Serial No. 75/427,820

James B. Lampert of Hale and Dorr LLP for Network Engines, Inc.

Rebecca L. Gilbert, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Acting Managing Attorney).

Before Quinn, Hohein and Chapman, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Network Engines, Inc. has filed an application to register the term "NETWORK ENGINES" for "fault-tolerant clustered servers."[1]

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "NETWORK ENGINES" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

[1] Ser. No. 75/427,820, filed on February 2, 1998, which alleges dates of first use of August 1, 1997.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, reiterating the statements which it made in its response to the initial Office action, acknowledges in its brief that:

> Applicant notes that the term "engine" is defined in computer terminology as "the portion of a program that determines how the program manages and manipulates data; another name for processor; a piece of hardware that encapsulates some function but can't be used without some kind of front end of an analogous piece of software." However, according to *The American Heritage College Dictionary*, third edition ... 1993, the first definition of "engine" is a "machine that converts energy into mechanical force or motion." The term engine also has common meanings including a gasoline engine used in automobiles, a fire engine or a locomotive engine.

While noticeably omitting any explanation as to why the "common" or other non-computer meanings of the term "engine" would somehow be relevant in the context of its "fault-tolerant clustered servers," applicant nevertheless argues that:

> It is clear that a mark is not descriptive if it connotes more than one meaning; one of the definitions may be descriptive, but others suggest some other association. In that sense, the present mark may be reminiscent or suggestive of a fault-tolerant clustered served, but it is not "merely descriptive."

Applicant further contends, as it has maintained since its initial response to the refusal to register, that:

> The mark sought to be registered is not simply "engine" but is rather the two word mark NETWORK ENGINES. As shown by the brochure submitted ..., Appellant's goods are useful over a wide range, and are neither limited to, nor understood to be used only in "networks." The non-descriptive nature of the mark is emphasized in that the text of the brochure nowhere even uses the word "network" in describing Appellant's clustered server product.

Applicant concludes, therefore, that "consumers would be required to exercise thought and imagination in order to understand the

nature of the goods clearly, a fact that indicates the mark does not convey immediate, direct knowledge about the goods and is at most, suggestive" rather than merely descriptive.

The Examining Attorney, on the other hand, maintains that "the term 'NETWORK ENGINES' immediately describes a characteristic, function, feature, purpose or use of fault-tolerant clustered servers." In this regard, the Examining Attorney notes among other things that both The Random House Personal Computer Dictionary (1991) and Webopedia (1999) define[2] "server" as:

> A computer or device on a network that manages network resources. For example, a *file server* is a computer and storage device dedicated to storing files. .... A *print server* is a computer that manages one or more printers, and a *network server* is a computer that manages network traffic. A *database server* is a computer system that processes database queries.
>
> Servers are often *dedicated*, meaning that they perform no other tasks besides their server tasks. On multiprocessing operating systems, however, a single computer can execute several programs at once. A server in this case could refer to the program that is managing resources rather than the entire computer.

In view thereof, and citing the definitions, respectively made of record from Webster's New World Dictionary of Computer Terms (4th ed.) and The New Hacker's Dictionary (3rd ed. 1996), which define

[2] Conceding that such definitions have not previously been made of record, the Examining Attorney requests in her brief that the Board take judicial notice thereof. The request is approved inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.,

"engine" as "[t]he portion of a program that determines how the program manages and manipulates data. Another name for PROCESSOR" and as "1. A piece of hardware that encapsulates some function but can't be used without some kind of front end .... 2. An analogous piece of software ...," the Examining Attorney contends that the term "NETWORK ENGINES" immediately describes "a function of the [applicant's fault-tolerant cluster] servers, which are programs or devices which manage data on a network."

As further support for her position, the Examining Attorney points out that:

> The applicant itself uses the term "engine" to describe its product. The brochure which applicant submits to prospective purchasers describes its cluster servers as containing "10 independent engines in a single chassis". .... In addition, the applicant's specimen of use describes that a feature of the product is "Hardware Windows Acceleration - 32-bit Graphics Engine". .... Also of note is the industry-wide usage of the phrase "network engines" to describe communication servers".

According to the Examining Attorney, the evidence "overwhelmingly shows that 'network engines' are communication servers and, thus, it is "clear that the term 'NETWORK ENGINES' describes a feature, function, use, characteristic and purpose of the applicant's fault-tolerant cluster servers.

In particular, we observe that the brochure furnished by applicant, which refers to its "Fault-tolerant Load-balanced Clustered Server" as providing "Torque for your Network," touts such "Key benefits" as "Linear scalability: 100% performance

---

Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

increase each time you add another engine" and, as noted by the Examining Attorney, "Clustering support: With 10 independent engines in a single chassis, clustering is easy and affordable." We also notice that, as contended by the Examining Attorney, the "NEXIS" excerpts show that the term "network engine(s)" is used in a descriptive, if not generic, manner in the field of computer networks. Among the most pertinent examples thereof are the following (emphasis added):

> "Micro Agent contains a micro version of the RealSecure **network engine**. The agent sits at the network stack on a server and can analyze packets at the data link ....
> ....
> NetProwler sells for $7,995; while RealSource costs $8,995 per **network engine**." -- InternetWeek, June 14, 1999 and TechWeb News, June 11, 1999;
>
> "Users can pose queries on information in Insight using Autonomy's pattern-matching neural **network engine**." -- PC Week, April 5, 1999;
>
> "RealSecure consists of a **network engine**, a system agent and a console. The a **network engine**, which resides on a dedicated PC, monitors network transmissions for signs of abuse and attack. ....
> ....
> In addition, although the a **network engine** can immediately update the console with alerts, it maintains a separate database that must be synchronized with the master database ....
> ....
> Axent's **network engine** also allows administrators to create customized attack signatures for any purpose, tightening protection around extranets, database applications, and ...." -- PC Week, February 15, 1999;
>
> "**Network Engines** Inc. recently turned up the volume on its initiative to increase its

> corporate visibility by helping to produce a Net-based Aeorsmith concert. ....
>
> ....
>
> .... The company also markets a P6000 Server, which offers the industry's highest-density architecture, and can run as many as 10 **network engines** in a single chassis and up to 60 processors in as little as 5 square feet." -- Business Dateline, November 9, 1998;
>
> "These modules, the firm says, are designed to be installed at strategic locations throughout the enterprise network and include **network engines** and system agents.
>
> The **network engines**, ISS says, monitor network traffic in real time for signs of malicious intent ....
>
> ....
>
> The RealSecure **network engines** sells [sic] for $8,995 for a single perpetual license ...." -- Newsbytes, October 6, 1998; and
>
> "The software consists of a **network engine**, agent software for host-based detection and a management console ...." -- InternetWeek, October 5, 1998.

In addition, we judicially notice the following relevant definitions from The Computer Glossary (7th ed. 1995):

> **engine** (1) a specialized processor, such as a graphics processor. Like any engine, the faster it runs, the quicker the job gets done. See *graphics engine* and *printer engine*. (2) Software that performs a primary and highly repetitive function such as a database engine, graphics engine or dictionary engine. (3) Slang for processor;
>
> **network** (1) An arrangement of objects that are interconnected. See *LAN* and *network database*. (2) In communications, the transmission channels interconnecting all client and server stations as well as all supporting hardware and software;
>
> **server** A computer in a network shared by multiple users. See *file server* and *print server*.

In the present case, it is our view that, when used on or in connection with applicant's "fault-tolerant clustered servers," the term "NETWORK ENGINES" immediately describes, without conjecture or speculation, a significant purpose or function of such goods, namely, that they act as specialized processors for manipulating and managing a computer network. As the dictionary definitions make clear, applicant's fault-tolerant clustered servers are computers on a network which perform the processes necessary to the operation of the network. The "NEXIS" excerpts, in fact, establish that the term used in the field to describe processors or servers which are dedicated to managing and manipulating network data is "network engine(s)."

Thus, and contrary to applicant's contentions, there is nothing in the term "NETWORK ENGINES" which, when used in connection with servers, including applicant's fault-tolerant clustered servers, is ambiguous, incongruous or otherwise susceptible to multiple meanings. Instead, just as those in the field of computer networks would know or readily understand the meaning of such terms as "print servers" or "printer engines" and "graphics engines" or "graphics servers," the technically knowledgeable and highly sophisticated purchasers and users of applicant's goods would readily regard the term "NETWORK ENGINES" as designating engines of a type for managing and manipulating the operation of computer networks. Clearly, as borne out by the "NEXIS" excerpts demonstrating use of the terminology "network engine(s)" in the trade, it is the technical meaning of the word "engine" in the computer field which, when used in conjunction

with the word "network," would immediately have significance in the context of applicant's goods rather than, as asserted by applicant, the layman's parlance of "engine" as simply any "machine that converts energy into mechanical force or motion."

Accordingly, because the term "NETWORK ENGINES" conveys forthwith a significant function or purpose of applicant's "fault-tolerant clustered servers," such term is merely descriptive of applicant's goods within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.